

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HGM,

Plaintiff,

-against-

JGV APPAREL GROUP, et al.,

Defendants.

22-CV-7184 (ALC)

ORDER

ANDREW L. CARTER, JR., United States District Judge:

The Court is in receipt of the parties' letters regarding Defendants' anticipated motion to dismiss. The Amended Complaint pleads that Plaintiff seeks damages for its "lost business opportunity and profits as a result of defendants' breach of contract" as well as Plaintiff's legal fees "in the amount of 9% from the due date of July 7th, 2021, and its litigation's costs." (Am. Compl., ECF No. 19 ¶ 9.) Defendants argue that this is "purely speculative" and not sufficient to satisfy the requirements of the amount in controversy. (ECF No. 19 at 2.) Neither Plaintiff nor Defendants have cited any caselaw supporting their positions.

Defendants' motion for a pre-motion conference at ECF No. 20 is **GRANTED**. The Court will hold the pre-motion conference on **April 25, 2023 at 11:00 a.m.** All parties shall appear and should contact the Court at **1-888-363-4749 (access code: 3768660)**. At the conference, the parties should be prepared to discuss the relevant law and issues, including:

- *Shelton v. Sethna*, No. 10-CV-4128 (TPG), 2012 WL 1022895, at *4 (S.D.N.Y. Mar. 26, 2012) ("Under New York law, consequential damages that are reasonably foreseeable to the contracting parties can be recovered in a breach of contract action.")
- *Gasery v. Kalakuta Sunrise, LLC*, 422 F. Supp. 3d 807, 818 (S.D.N.Y. 2019) ("attorney's fees can be counted towards satisfying the amount-in-controversy

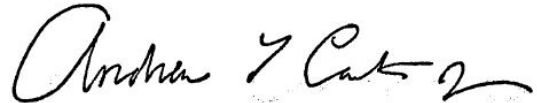
threshold only if they are recoverable as a matter of right pursuant to statute or contract.”) (internal citations and quotations omitted).

- *Bracken v. MH Pillars Inc.*, 290 F. Supp. 3d 258, 263 (S.D.N.Y. 2017) (“a plaintiff’s allegation regarding the amount in controversy may be overcome by a finding ‘to a legal certainty’ that the amount recoverable does not exceed the jurisdictional minimum amount.”)
- *Kimm v. KCC Trading, Inc.*, 449 Fed. Appx. 85, 85–86 (2d Cir. 2012) (an award of attorneys’ fees may be used to meet the statutory jurisdictional threshold “only if they are recoverable as a matter of right pursuant to statute or contract.”)

Additionally, Plaintiff is directed to file a letter attaching the contract at issue in this litigation by **April 18, 2023**.

SO ORDERED

Dated: April 10, 2023
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.
United States District Judge